

2-14-2013

State v. Silver Appellant's Reply Brief Dckt. 40017

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Silver Appellant's Reply Brief Dckt. 40017" (2013). *Idaho Supreme Court Records & Briefs*. 765.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/765

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Appellant,)	No. 40017
)	
vs.)	Jerome Co. Case No.
)	CR-2012-259
TENNISON MICHAEL SILVER,)	
)	
Defendant-Respondent.)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME**

**HONORABLE JOHN K. BUTLER
District Judge**

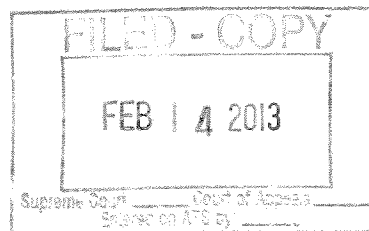
**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

**PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division**

**MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEYS FOR
PLAINTIFF-APPELLANT**

**BROOKE BALDWIN-REDMOND
Wright Brothers Law Office. PLLC
P.O. Box 226,
Twin Falls, Idaho 83303
(208) 733-3107**



**ATTORNEY FOR
DEFENDANT-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
ARGUMENT IN REPLY	1
The District Court Erred By Applying An Incorrect Legal Standard In Determining Silver Was In Custody For Purposes Of <i>Miranda</i> Prior To His Formal Arrest.....	1
A. Introduction	1
B. Silver Was Not In Custody For Purposes Of <i>Mianda</i> Until His Formal Arrest	1
CONCLUSION.....	8
CERTIFICATE OF MAILING	8

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Berkemer v. McCarty</u> , 468 U.S. 420 (1984).....	2, 4
<u>California v. Beheler</u> , 463 U.S. 1121 (1983)	1
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966).....	1
<u>Oregon v. Mathiason</u> , 429 U.S. 492 (1977)	1
<u>People v. Breidenback</u> , 875 P.2d 879 (Colo. 1994).....	5
<u>People v. Figueroa-Ortega</u> , 283 P.3d 691 (Colo. 2012)	4, 5
<u>People v. Matheny</u> , 46 P.3d 453 (Colo. 2002).....	5
<u>People v. Pancoast</u> , 659 P.2d 1348 (Colo. 1982).....	5
<u>People v. Polander</u> , 41 P.3d 698 (Colo. 2001)	5
<u>State v. Albaugh</u> , 133 Idaho 587, 990 P.2d 753 (Ct. App. 1999).....	2
<u>State v. James</u> , 148 Idaho 574, 225 P.3d 1169 (2010)	3, 4, 6, 7
<u>State v. James</u> , Docket No. 33895, 2008 Opinion No. 56 (Ct. App. June 13, 2008).....	3, 4
<u>State v. Medrano</u> , 123 Idaho 114, 844 P.2d 1364 (Ct. App. 1992)	2
<u>State v. Myers</u> , 118 Idaho 608, 798 P.2d 453 (Ct. App. 1990)	7
<u>State v. Silva</u> , 134 Idaho 848, 11 P.3d 44 (Ct. App. 2000)	2
<u>U.S. v. Brobst</u> , 558 F.3d 982 (9 th Cir. 2009).....	2
<u>United States v. Mendenhall</u> , 446 U.S. 544 (1980).....	5
 <u>STATUTES</u>	
I.C. § 37-2732(c)(3)	6

ARGUMENT IN REPLY

The District Court Erred By Applying An Incorrect Legal Standard In Determining Silver Was In Custody For Purposes Of *Miranda* Prior To His Formal Arrest

A. Introduction

The district court erred when it relied on Silver's reasonable belief that he was going to be placed under arrest in determining whether Silver was *already* in custody for purposes of Miranda¹ when he made incriminating statements to officers. The district court thus erred when it granted Silver's motion to suppress those statements.

On appeal, Silver does not dispute that the district court utilized an incorrect standard, but instead argues that the district court's ultimate conclusion to suppress the statements was correct. (See generally, Respondent's brief.) Silver's argument fails because a review of the totality of the circumstances reveals that he was not actually in custody for purposes of Miranda until he was formally arrested.

B. Silver Was Not In Custody For Purposes Of *Mianda* Until His Formal Arrest

The test for determining whether an individual is in custody for purposes of Miranda is whether, considering the totality of the circumstances surrounding the interrogation, there was a "formal arrest or restraint on freedom of movement of the degree associated with a formal arrest." California v. Beheler, 463 U.S. 1121, 1125 (1983) (quoting Oregon v. Mathiason, 429 U.S. 492, 495 (1977)).

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

Relevant factors in making this determination include the time, location, public visibility of the interrogation, the conduct of the officers, the nature and manner of the questioning, the extent to which officers confront the suspect with evidence of his guilt, and the presence of other persons. State v. Medrano, 123 Idaho 114, 117, 844 P.2d 1364, 1367 (Ct. App. 1992); State v. Albaugh, 133 Idaho 587, 591, 990 P.2d 753, 757 (Ct. App. 1999); see also U.S. v. Brobst, 558 F.3d 982, 995-997 (9th Cir. 2009). Because the “in custody” test for Miranda requires a restraint on freedom associated with formal arrest, a person subjected to an investigative detention based on reasonable suspicion of criminal activity, although not “free to leave,” is ordinarily not in custody for purposes of Miranda. See Berkemer v. McCarty, 468 U.S. 420 (1984).

In this case, the district court suppressed incriminating statements made by Silver after police officers located marijuana on Silver’s person and in his car. (R., pp.71-86.) The court concluded that by this point during Silver’s contact with the officers, Silver had a “reasonable belief that he was going to be placed under arrest.” (R., p.83.) The district court erred because the legal standard for determining whether an individual is in custody for purposes of Miranda is not whether a reasonable person believes they *will be* put into custody to a degree associated with formal arrest, but rather whether a reasonable person believes they *are presently* in custody to a degree associated with formal arrest. See State v. Silva, 134 Idaho 848, 854, 11 P.3d 44, 50 (Ct. App. 2000).

On appeal, Silver does not dispute that the district court applied an incorrect legal standard. Instead, Silver emphasizes this Court’s free review of

the district court's legal conclusion and that "[t]he sole issue this Court needs to determine is whether the district court was correct in finding that Silver was in custody for the purposes of Miranda." (Respondent's brief, pp.5-6.) However, a review of the record reveals that Silver was not in custody for purposes of Miranda until he was formally arrested.

In contending that Silver was in custody for purposes of Miranda by the time officers recovered marijuana from his vehicle, Silver relies primarily on the officers' confronting of Silver with this evidence, and the nature of their questioning regarding Silver's drug activity. (See Respondent's brief, pp.6-9.) Silver essentially contends that what began as a "routine" traffic stop evolved into a custodial arrest by virtue of this questioning, which exceeded the scope of the purpose of the original stop, and which included threats of future arrest. (Id.)

At what point a traffic stop is no longer "routine" was also the focus employed by a majority of the Idaho Court of Appeals in State v. James, Docket No. 33895, 2008 Opinion No. 56 (Ct. App. June 13, 2008) (overruled by State v. James, 148 Idaho 574, 225 P.3d 1169 (2010)). While recognizing that "routine" traffic stops do not implicate Miranda, the Idaho Court of Appeals found that events occurring during James' traffic stop, including the officer's threat to arrest all of the occupants in the car and James' admission of ownership of methamphetamine found in his vehicle, "significantly distinguish[ed] [the case] from an ordinary traffic stop." James, Docket No. 33895, 2008 Opinion No. 56, p.3.

The Idaho Supreme Court overruled the Idaho Court of Appeals and concluded that the officer's discovery of methamphetamine in the vehicle, the existence of probable cause to arrest all three occupants of the vehicle, and the officer's threats to perform such arrests, did not transform the investigative detention into a formal arrest for the purposes of Miranda where there was an absence of other factors associated with formal arrest. James, 148 Idaho at 576-578, 225 P.3d at 1171-1173. In James, as in the present case, it was only the discovery of the drugs and the subsequent questioning of the suspects that placed the case in "a unique circumstance in considering whether James was 'in custody' for Miranda purposes." See James, Docket No. 33895, 2008 Opinion No. 56, pp.4-6 (Perry, J. dissenting).

Indeed, while Miranda is not implicated during "routine" traffic stops, Berkemer, 468 U.S. at 422-425, James makes clear that it does not follow from Berkemer that Miranda warnings are required in all non-routine traffic stops. Specifically, Miranda warnings are not necessarily required where evidence found in the course of a routine traffic stop establishes probable cause of drug crimes. The traffic stop in James was anything but routine once the officers discovered methamphetamine. In a Miranda custody analysis, the proper focus is on the restraint of liberty placed on a suspect, not whether the stop is routine.

Specifically, as the Colorado Supreme Court explained in People v. Figueroa-Ortega, 283 P.3d 691, 693 (Colo. 2012), the United States Supreme Court, in its Miranda custody analyses, has emphasized those factors which

constitute infringements on liberty typically distinguishing a mere investigative stop from an arrest:

Because interrogation can be custodial only if the person being interrogated has at least been stopped, the non-exclusive list of factors frequently identified as bearing on the question of whether a reasonable person would no longer feel free to leave, and therefore whether he has been seized at all, remains relevant for *Miranda* purposes. See *People v. Matheny*, 46 P.3d 453, 456-466 (Colo. 2002). Because, however, that general list of factors was actually developed to determine whether an encounter with law enforcement officers has ceased to be consensual and therefore has progressed beyond a contact short of a stop to a constitutionally cognizable investigatory stop, see *United States v. Mendenhall*, 446 U.S. 544 (1980); see also *People v. Pancoast*, 659 P.2d 1348, 1350 (Colo. 1982), both this court and the [United States] Supreme Court have emphasized more specifically those infringements on liberty typically distinguishing a mere investigatory stop from an arrest. By way of example, we have previously found that, although not dispositive, drawn guns and physical restraints like the use of handcuffs are more typically associated with an arrest than a mere stop, see *People v. Breidenback*, 875 P.2d 879 (Colo. 1994), and that making clear to a detainee that he will not be released after a short investigatory stop is similarly indicative of arrest, see *People v. Polander*, 41 P.3d 698, 705 (Colo. 2001). In *Berkemer* itself, the Supreme Court emphasized the importance, from a detainee's perspective, of being removed to a secluded place, even if only a patrol car, rather than being questioned in public view, as would be more typical of an investigatory stop. 468 U.S. at 438.

Figueroa-Ortega, 283 P.3d at 692-693 (holding a suspect was not in custody for purposes of Miranda even after detective confronted the suspect with video surveillance evidence of a restaurant burglary).

The confronting of a suspect with evidence of his guilt, and the questioning of a suspect about that evidence, are factors distinguishing a casual encounter from an investigative detention. However, "[t]hose infringements on liberty typically distinguishing a mere investigatory stop from an arrest," such as

physical restraints, drawn weapons, removal of a suspect from public view, and statements to a suspect that he is under arrest, were simply not present during Silver's contact with law enforcement prior to his formal arrest.

Further, while an officer's confronting of a suspect with evidence of his guilt can be a *factor* in establishing Miranda custody, the officers' confronting of Silver with the discovered marijuana is not as strong a custody factor as the corresponding confrontation in James. In James, officers confronted the suspects with evidence that gave the officers probable cause to arrest those suspects for felony methamphetamine possession. James, 148 Idaho at 578, 225 P.3d at 1173. In the present case, officers could confront Silver with evidence that gave them probable cause to arrest him for the misdemeanor crime of possession of under three ounces of marijuana. See I.C. § 37-2732(c)(3). The latter type of confrontation is less likely to cause a reasonable person to believe his freedom of movement has been restrained to the degree associated with a formal arrest, because it remains possible in such a situation that an officer will merely issue a misdemeanor citation. Consistent with the existence of this possibility, before Silver was arrested, the officers in the present case only discussed with him the *potential* of future arrest. (See generally State's Exhibit A.)

Neither the district court nor Silver has persuasively distinguished James. On appeal, Silver states:

The State relies on *James* to support its claim that Silver was not subject to a custodial interrogation. However, this reliance is misplaced. In *James*, the Idaho Supreme Court held that "a

conditional threat of future lawful arrest alone does not transform a detention into 'custody' for purposes of *Miranda*."

However, unlike the suspect in *James*, Silver's interrogation was not limited to the threat of future, lawful arrest. In fact, the threat of future arrest was only one of a myriad of factors that suggest that Silver was subject to a custodial interrogation. It was past midnight by the time the officers began questioning Silver about marijuana. Likewise, there were two officers at the scene, late at night, both in marked vehicles, both in uniform and both armed. There were no other people present at the scene. In addition, as with the officers in [*State v. Myers*, 118 Idaho 608, 798 P.2d 453 (Ct. App. 1990)], the questioning exceeded the scope of the investigatory stop. As noted by the district court, there would be no reason for the officers to inquire as to Silver's intended purpose of the marijuana found at the scene, other than to elevate a misdemeanor to a felony.

(Respondent's brief, pp.8-9 (citations and footnotes omitted).)

The "myriad of factors" that Silver suggests supports the district court's granting of his motion to suppress was largely also present in James. As in the present case, James' encounter with police occurred after midnight, following a traffic stop, with only two officers and the suspects present. James, 148 Idaho at 575-578, 225 P.3d at 1170-1173. Further, in both cases, the officers' questioning of the suspects exceeded the scope of the original traffic stops once evidence of drug possession was discovered. Id. In the present case, as in James, the absence of other factors that more closely implicate techniques with which Miranda was concerned, such as physical restraint, removal from a public place, police domination, or affirmative police statements indicating current arrest, were simply not present prior to Silver's formal arrest.

The district court applied an incorrect legal standard in determining whether Silver was in custody for purposes of Miranda at the time he made

incriminating statements to law enforcement officers. Application of the correct standard reveals that Silver was not actually in Miranda custody until his formal arrest. Reversal of the district court's granting of Silver's motion to suppress is therefore appropriate.

CONCLUSION

The state respectfully requests this Court to reverse the district court's order suppressing Silver's statements and to remand for further proceedings.

DATED this 14th day of February 2013.



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of February, 2013, I caused a true and correct copy of the foregoing REPLY BRIEF to be placed in the United States mail, postage prepaid, addressed to:

Brooke Baldwin-Redmond
Attorney At Law
P.O. Box 226
Twin Falls, ID 83303



MARK W. OLSON
Deputy Attorney General

MWO/pm